

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
1998 Biennial Regulatory Review –)	
Streamlined Contributor Reporting)	CC Docket No. 98-171
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	
with Hearing and Speech Disabilities, and the)	CC Docket No. 90-571
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	
Numbering Plan and North American)	CC Docket No. 92-237
Numbering Plan Cost Recovery Contribution)	NSD File No. L-00-72
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	

**COMMENTS
OF
NRTA AND OPASTCO**

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SUMMARY

Of the three contribution methodologies outlined in the SFNPRM, NRTA and OPASTCO believe that only the proposal for splitting contributions between switched access and interstate transport providers would comply with the requirement set forth in the Telecommunications Act of 1996 that calls for “equitable and nondiscriminatory” contributions from all interstate telecommunications carriers. Since interstate telephone calls require both a connection to a local distribution network and a connection to a network equipped to transport these calls across state lines, splitting USF contributions equitably between all carriers who provide either of these types of connections would distribute this responsibility in an equitable and nondiscriminatory manner. This approach is legally valid because it is consistent in assessing connections to the actual interstate transmission network, regardless of who provides the connection or how the connection is achieved. Ultimately, such a contribution methodology would better ensure the stability and sufficiency of the USF for the long-term.

On the other hand, the remaining “connections-based” assessment methodologies suffer from serious deficiencies. Even with the inclusion of a mandatory minimum annual universal service contribution obligation, the first “connections-based” proposal does not meet the Act’s requirement that contributions assessed on all interstate telecommunications carriers must be equitable and nondiscriminatory. This is because a minimum annual contribution – perhaps as small as one percent – simply cannot be equated with the contribution obligation that such a system would place upon providers of exchange access, whose services are merely adjuncts to the state-crossing services provided by interexchange carriers and other interstate transport providers. The inclusion of a “catch-all” minimum USF contribution does not bring this scheme into compliance with the statute.

Similarly, the telephone number-based methodology fails to satisfy the same plain language requirements of Section 254(d). Using telephone numbers assigned under the North American Numbering Plan is not a rational way to identify the statutory group required to contribute or to determine the correct universe of contributors to assess on an equitable and nondiscriminatory basis. Here again, grafting a mandatory minimum contribution requirement for all interstate telecommunications carriers does not bring the telephone number-based methodology into compliance with Section 254(d).

All three of the contribution methodologies that the Commission has presented for comment include components that would assess capacity-based contributions for some or all connections. While NRTA and OPASTCO recognize that the Commission faces a daunting challenge in attempting to construct such a system, all of the capacity-based proposals advanced thus far are unworkable. This is because the tiered capacity-based assessments outlined by the Commission are likely to create both marketplace distortions and arbitrage opportunities. The suggested four-tier structure could influence customers' decisions related to the amount of capacity they purchase, in order to avoid higher USF assessments. Moreover, these tiers could also encourage customers to purchase multiple lower-capacity connections – instead of one more efficient high-capacity connection – so as to minimize their cumulative USF assessments.

As it considers the specific structure of any capacity-based connection charges, NRTA and OPASTCO urge the Commission to construct a system which requires equitable and nondiscriminatory contributions from all interstate carriers, by assessing functionally equivalent services with equivalent contribution obligations. Moreover, any tiered system for determining capacity-based assessments must be structured so as to minimize possible marketplace distortions. Lastly, any such system would have to be administratively workable for both

interstate transport and exchange access providers. In order to resolve these issues, the Commission must further analyze the effects of a capacity-based system, before it includes such a component as part of any new contribution methodology.

Another serious deficiency in each of the three proposals that the Commission has presented in its SFNPRM is the failure to include all facilities-based broadband Internet access providers as contributors. By addressing this issue as part of a separate proceeding, the Commission has made it impossible to determine accurately whether the adoption of any new mechanism will ensure the long-term stability and sufficiency of the USF or if any of these new methodologies would provide greater certainty to market participants. It also leaves open the question of whether any new plan would operate in an “equitable and nondiscriminatory manner.”

Approving any of these proposed assessment mechanisms without simultaneously requiring all facilities-based broadband Internet access providers to contribute would fail to address a major cause of the instability of the present system. Moreover, as more and more interstate traffic migrates to broadband platforms and Internet Protocol networks, it becomes increasingly inequitable and discriminatory to require only wireline telecommunications carriers to contribute on the basis of their broadband service offerings, while broadband providers using other platforms contribute nothing. Consequently, the Commission cannot reasonably ensure its goal of stabilizing the USF for the long-term unless it requires all facilities-based broadband Internet access providers to contribute as part of any further revisions to its contribution methodology.

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COMMENTS OF NRTA AND OPASTCO

The National Rural Telecom Association (NRTA) and the Organization for the
Promotion and Advancement of Small Telecommunications Companies (OPASTCO)

submit these comments in response to the Second Further Notice of Proposed Rulemaking (SFNPRM) in the above-captioned proceedings.¹ The Commission is seeking comment on whether to retain or modify the existing revenues-based methodology for assessing universal service contributions or to adopt any of several proposals to assess universal service contributions based on the number and capacity of “connections” provided to a public network.

NRTA is an association of incumbent local exchange carriers (ILECs) that obtain financing under Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) programs. OPASTCO is a national trade association representing approximately 500 small ILECs serving rural areas of the United States. All of the members of both associations are rural telephone companies as defined in 47 U.S.C. Section 153(37). In addition, almost all of the members of both associations rely on some form of federal universal service funding to provide affordable, high-quality service within their high-cost, rural territories. Thus, NRTA and OPASTCO have a paramount interest in ensuring the long-term stability and sufficiency of the high-cost universal service programs.

I. INTRODUCTION

In last year’s Further Notice of Proposed Rulemaking (FNPRM) in this proceeding, the Commission sought comment on a proposal to assess universal service contributions based on the number and capacity of “connections” provided to a public network.² In their comments, NRTA and OPASTCO indicated that they were supportive of exploring a flat-fee monthly contribution mechanism, so long as it complied with the statutory mandate for equitable and

¹ *Federal-State Joint Board on Universal Service, et.al.*, CC Docket No. 96-45, *et.al.*, Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (SFNPRM).

² *See generally, Federal-State Joint Board on Universal Service, et.al.*, CC Docket No. 96-45, *et.al.*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 3752 (2002) (FNPRM).

nondiscriminatory contributions from every telecommunications carrier that provides interstate telecommunications, as required by Section 254(d) of the 1996 Act.³

The Commission now seeks comment on three “connections-based” proposals. The first proposal is a revised version of the methodology proposed in the FNPRM. It would continue to impose a flat monthly fee for each end-user connection. However, it would now subject every interstate telecommunications carrier to a minimum contribution, regardless of whether it provides connections, except to the extent the Commission deems a carrier’s contribution *de minimis* (SFNPRM, paras. 75-85). The second proposal (*Id.*, paras. 86-95) would split “connections-based” contributions between switched access and interstate transport providers, assess access providers for non-switched connections, and assess interstate telecommunications services not directly tied to connections based on revenues. The final proposal (*Id.*, paras. 96-100) would assess “connections-based” contributions on the basis of telephone numbers assigned to end users and assess certain lines without assigned numbers based on the capacity of the end-user connections.

II. THE INCLUSION OF A MANDATORY MINIMUM CONTRIBUTION REQUIREMENT FOR ALL INTERSTATE TELECOMMUNICATIONS CARRIERS DOES NOT BRING THE REVISED “CONNECTIONS-BASED” METHODOLOGY INTO COMPLIANCE WITH SECTION 254(d)

In the SFNPRM, the Commission has modified the “connections-based” assessment methodology from its FNPRM to include a mandatory minimum annual universal service contribution to be collected from every interstate telecommunications carrier, except to the extent that the Commission deems a carrier’s contribution to be *de minimis* (para. 75). This

³ NRTA and OPASTCO Comments on FNPRM, pp. 7-8. NRTA, NTCA, and OPASTCO later submitted a detailed analysis of why the “connections-based” proposal then under consideration could not be squared with the plain language of Section 254(d). *See* September 19, 2002, letter from Margot S. Humphrey to Marlene H. Dortch and accompanying memorandum filed in these proceedings. Since many of the same issues are presented by two of the three “connections-based” methods raised in the SFNPRM, that memorandum is incorporated herein by reference.

modification was obviously made in an attempt to address the concerns raised by numerous parties, including NRTA and OPASTCO, that the initial “connections-based” proposal violated Section 254(d)’s requirement that *every* interstate telecommunications carrier contribute.⁴ Unfortunately, the mere addition of a “catch-all” minimum contribution does not achieve compliance with the law.

Section 254(d) states that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, *on an equitable and nondiscriminatory basis*, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵ The revised “connections-based” plan does not result in interexchange carriers (IXCs) – whose primary business is providing the actual transmission across state lines that is a prerequisite for any interstate service to occur – contributing on a basis that could reasonably be considered “equitable and nondiscriminatory.”

The adoption of a mandatory minimum assessment would not result in a contribution obligation from IXCs and other primarily non-connections based carriers that comes anywhere close to the obligation that local exchange carriers (LECs) would be forced to bear under the Commission’s modified “connections-based” methodology. A minimum annual contribution, based on a flat percentage – perhaps as little as one percent (SFNPRM, para. 76) – of a carrier’s interstate telecommunications revenues would still shelter IXCs from fulfilling their statutory lead role in contributing to universal service. Moreover, even though entirely non-connections-based interstate carriers, such as long-distance resellers,⁶ would at least contribute something

⁴ See, e.g., ACS Reply Comments on FNPRM, pp. 8-9; BellSouth Comments on FNPRM, pp. 5-7; Voicestream Wireless Comments on FNPRM, pp. 12-15; Verizon Comments on FNPRM, pp. 20-22. See also, NRTA and OPASTCO Comments on FNPRM, pp. 8-12.

⁵ 47 U.S.C. Section 254(d) (emphasis added).

⁶ The Commission has noted that exclusive providers of pre-paid calling cards or dial-around services are examples of non-“connections-based” interstate telecommunications carriers. See, FNPRM, 17 FCC Rcd 3782, para. 66.

through the Commission's mandatory minimum assessment, a contribution based upon one percent of their annual interstate revenues would not appropriately reflect the entirely interstate service that they provide. Conversely, carriers whose primary interstate service is providing exchange access to the carriers that actually transport calls across state lines would be forced to shoulder an inequitable disproportionate share of the contribution responsibility.

The Commission's misguided effort to construct a sort of "exception" to an otherwise "connections-based" methodology not aimed at interstate transmission providers so that these clearest and most essential interstate telecommunications carriers would pay at least something demonstrates that the fundamental premise behind the proposal is fatally flawed. Any contribution methodology that places the vast majority of the contribution burden on providers of exchange access, who are merely adjuncts to the state-boundary-crossing services provided by interstate transport carriers, violates the mandate that all interstate carriers contribute "on an equitable and nondiscriminatory basis."

III. THE COMMISSION SHOULD CONCENTRATE ON CONSTRUCTING A LAWFUL "CONNECTIONS-BASED" CONTRIBUTION METHODOLOGY BASED UPON SPLITTING CONTRIBUTIONS BETWEEN SWITCHED TRANSPORT AND ACCESS PROVIDERS THAT RESULTS IN "EQUITABLE AND NONDISCRIMINATORY" UNIVERSAL SERVICE ASSESSMENTS ON EVERY INTERSTATE TELECOMMUNICATIONS CARRIER

The only proposal in the SFNPRM that has the necessary nexus with Section 254(d)'s statutory prescription for carrier contributions is the proposal (SFNPRM, paras. 86-95) to assess contributions on both transport and access providers based on connections. Splitting total contributions between IXC's and access providers can rely on the logic that all interstate communications requires both a connection to a local distribution network and a connection to a network that actually transports the communication across state lines.

An approach that uses a “connections-based” division to assess both IXC’s and LEC’s can be designed to be sustainable and workable, as well as legal, if the end result is to assess contributions fairly to both classes of carriers. The Commission needs to work from the statutory “every carrier” and “equitable and nondiscriminatory” standards. It cannot simply seek to spare transport providers because of the growing difficulty in determining whether traffic is interstate and the declining revenues of the traditional wireline IXC’s.

NRTA and OPASTCO believe that the IXC’s have the information they need to determine their switched-transport-based contribution obligations under a system that assesses contributions on connections to both the local distribution network and the interstate transport network. Every such connection should be included, however. Contrary to the SFNPRM (paras. 86-87), access providers should not shoulder the entire assessment for non-switched connections. Nor should self-providers be permitted to evade an equitable contribution for providing the same function that is assessed if a carrier or other provider is the source. The “connections-based” system must be consistent in assessing the connection to the actual interstate transmission network, regardless of who provides it or how the function is achieved.

If IXC’s persist in their claims that LEC’s will not provide information and/or that they cannot derive the information about their customer connections themselves, the Commission should assess IXC’s’ transport network share of the contribution obligation on the basis of each IXC’s relative share of total interstate end-user revenues. At least until other carriers are added to the contributor base, the IXC’s’ total share should be at least half of the nationwide interstate contribution funding requirement because IXC’s are the quintessential “carrier[s] that provide[] interstate telecommunications services” required by Congress to contribute.

In spite of the work still to be done to develop a workable and fair methodology based on splitting the “connections-based” assessments between transport and access providers, this is the only proposal that has emerged so far that is consistent with the plain language of Section 254(d). Therefore, NRTA and OPASTCO urge the Commission to discard the others and turn its attention to resolving the remaining questions about capacity-based assessments (see Section V, below) and fashioning a workable and sustainable contribution system from this proposal.

IV. THE SFNPRM’S TELEPHONE NUMBER-BASED ASSESSMENT METHODOLOGY, LIKE THE MODIFIED “CONNECTIONS” METHODOLOGY, CONFLICTS WITH THE STATUTE BY SHIFTING AN INEQUITABLE AND DISCRIMINATORY SHARE OF CONTRIBUTION RESPONSIBILITIES FROM INTERSTATE TRANSMISSION PROVIDERS TO SWITCHED ACCESS PROVIDERS

The proposal to use telephone numbers to assess universal service contribution obligations (SFNPRM, paras. 96-100) suffers from the same fundamental flaws as does the modified “connections-based” methodology discussed in Section II, above. In the first place, a contribution assessment scheme that “assess[es] providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections” (*Id.*, para. 96) is not rationally related either to identifying the statutory class of contributors – “[e]very telecommunications carrier that provides interstate telecommunications services” – or to apportioning contributions among the members of that class “on an equitable and nondiscriminatory basis.” Telephone number assignments to end users do not enable them to secure interstate transmission at all unless they establish a presubscribed or other (e.g., prepaid card or dial-around) relationship with a carrier that actually provides transmission service across state lines. Although wireless carriers often provide both local access and long distance, incumbent and competitive wireline exchange access providers often do not. Indeed, the North

American Numbering Plan (NANP) uses area codes to identify calls that will cross ILEC boundaries, but even these long distance markers are assigned to locations, not to the providers of interstate services the statute says to assess. Moreover, telephone numbers serve different functions for different types of carriers and customers: A wireline telephone number is often assigned to a household. Wireless carrier numbers are specific to the telephone instrument and the user. Centrex numbers are used for individual stations; but the numbers used within private branch exchange (PBX) systems are not counted in a metric based on NANP-assigned numbers. Some numbers are even controlled by the subscriber so that they cannot be used for interstate calls.

In short, choosing assigned telephone numbers is a hopelessly arbitrary way to populate the mandatory class of carriers that provide interstate telecommunications services, let alone all the “other provider[s] of interstate telecommunications” (private carriers) that the Commission has thus far “required to contribute to the preservation and advancement of universal service” pursuant to Section 254(d) because the “public interest so requires.” The problem will only increase if the Commission fulfills its obligations and commitments not only to adopt a contribution methodology that identifies the statutory class of contributors, but also “to ensure the continued viability of universal service as the marketplace continues to develop” (SFNRPM, para. 66) and to be competitively neutral. As further explained in Section VI, below, to do that, the Commission will have to require all facilities-based broadband Internet access providers to contribute to universal service. A numbers-based methodology does not take these providers into account, as such providers and providers of related voice-over Internet Protocol (VOIP) are not assigned telephone numbers that could be assessed.

The Commission has not asked the basic question of whether the numbers-based scheme would assess the correct carriers, much less assess them equitably and without discrimination against some carriers. Indeed, that the numbering system is under federal jurisdiction does not negate the historical fact that the purpose and much of the current use of the numbers it would use as the basis for assessment involve local calling, including by customers that make no interstate calls. The inescapable fact is that a telephone number-based methodology fails to meet the mandate that any contribution mechanism must require “equitable and nondiscriminatory contributions” from all telecommunications carriers that provide interstate telecommunications services. As with the modified “connections-based” proposal, too, an effort to rectify a system that identifies the wrong universe of contributors rather than the contributor group that the statute prescribes cannot be patched up by grafting on a “minimum contribution obligation on all providers” (SFNPRM, para. 96) in an effort to bring in the actual interstate transmission providers missed by the flawed contributor identification standard.⁷

Even if telephone numbers could somehow identify the right universe of contributors and assess them lawfully, it is not clear how such a system could be made administratively workable. The proponents have not provided sufficient information about how it would work, as the many questions about anomalous situations in paragraphs 97-98 of the SFNPRM indicate.

Finally, as discussed in the next section, the numbers-based plan also falls back (SFNPRM, para. 96) on “assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections.” However, the proponents of capacity-based assessments have not yet hit on a method that is fair and non-distorting, but still simple enough to be administratively workable.

⁷ The flaw in not targeting true interstate telecommunications carriers is evident when Commission asks “whether there are any numbers associated with special access and private lines that could be assessed.” (SFNPRM, para. 98)

V. ALL OF THE CAPACITY-BASED PROPOSALS ADVANCED SO FAR FALL SHORT OF MEETING THE REQUIREMENT FOR EQUITABLE AND NON-DISCRIMINATORY CONTRIBUTIONS, CREATE MARKETPLACE DISTORTIONS, AND RAISE SERIOUS ADMINISTRATIVE FEASIBILITY CONCERNS

All three of the “connections-based” contribution methodologies in the SFNPRM rely in part on assessments based on capacity. The minimum contribution obligation version of a “connections-based” methodology would assess the multi-line business (MLB) connections varying amounts based on their classification into different tiers of capacity, at levels sufficient to cover residual funding requirements (SFNPRM, para. 75). The second “connections-based” contribution proposal would assess all connections based on capacity and split the resulting contribution obligations for each switched end-user connection between access and transport providers. “Under this proposal there would be different capacity tiers for different types of connections,” as with the first proposal (*Id.*, para. 87). The third “connections-based” proposal would assess providers of switched connections based on telephone numbers assigned to end users and assess special access and private lines lacking assigned numbers based on the capacity of those end-user connections (*Id.*, para. 96). Each proposal uses capacity to deal with the inherent problem that simply counting end-user connections would assign vastly too great a share of the responsibility for contributions to residential and single line business connections, including end users that do not make any interstate calls.

Once the need to reflect differences in the kinds of connections is acknowledged, choosing the means of assessing varying contributions is a task fraught with potential marketplace distortions, inequities, and unjustified discrimination. The challenge for crafting a fair and workable capacity-based assessment methodology that will not distort the marketplace is to assess functionally equivalent services with equivalent contribution obligations. The tiers suggested so far have not met this challenge. Beyond that, even if this fundamental issue can be

resolved, any capacity-based system must be made administratively workable for both switched access and interstate transport providers. Thus far in this proceeding, this important issued also has yet to be resolved.

A tiered approach creates administrative problems and arbitrage opportunities. The breaks between tiers can skew purchase decisions and create competitive inequities. For example, customers may choose to purchase connections that fall just below a tier cut-off in the plan to avoid the higher assessment associated with the next tier. Choices based on the break points in universal service assessments passed through to customers on different tiers could cause under-use of the large capacity of fiber if the greater capacity is seen as carrying a penalty because the full capacity would not be needed frequently. Customers may also choose a less efficient service to minimize their pass through costs if the assessment for one high-capacity connection is less than the cumulative pass through costs for using a number of lower capacity connections. The number of connections assessed for PBX customers and how it is measured could also be controversial.

Adopting the four-tier system described in the SFNPRM (para. 81) – or another system with similar high jumps in assessments as capacity increases – would subject LEC broadband services to an excessive share of the capacity-based contribution obligation. This flawed metric would only serve to exacerbate the marketplace distortions that already exist vis-à-vis digital subscriber line (DSL) services and facilities-based broadband Internet access provided over all other platforms excluded from contributing to universal service. When only one group of providers of broadband platforms has to recover a universal service contribution from its end users (i.e., DSL services), marketplace forces are prevented from giving the proper price signals in light of differences in efficiency or service quality or innovative offerings. The proposal for a

three-tier system referenced in paragraph 98 of the SFNPRM would only aggravate distortions caused by the few price break points.

Adjustments to make the price and capacity breaks less abrupt carry added complexity and administrative costs. NRTA and OPASTCO do not think that the record contains enough analysis of the impacts of various capacity tier alternatives on residential or business customers, although a mistake in the impacts and purchasing choices of either group can be devastating for small and rural carriers and their affected customers.

VI. REGARDLESS OF THE UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY THAT THE COMMISSION ULTIMATELY ADOPTS, ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS SHOULD CONCURRENTLY BE REQUIRED TO CONTRIBUTE

The Commission seeks in this proceeding to make universal service sustainable. The best way to deal with well-justified concerns about sustaining universal service support is to broaden the contribution base. However, all proposals so far suffer from the Commission's mistaken insistence (SFNPRM, para. 87) not "at this time to directly assess information service providers." Failure to assess all facilities-based broadband Internet access providers perpetuates an unwarranted competitive disadvantage for wireline providers that is already distorting the marketplace. For example, the functionally equivalent DSL-based broadband services offered by LECs are already at a competitive price disadvantage, since facilities-based broadband Internet access providers using other platforms are not required to contribute to universal service.

In the SFNPRM (para. 76), the Commission again defers consideration of the universal service contribution obligations of broadband Internet access providers, pending action in its proceeding regarding the regulatory classification of wireline broadband Internet access. NRTA and OPASTCO have previously indicated that failing to consider this related issue makes it literally impossible to evaluate whether any changes to the contribution methodology will

adequately “ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve.”⁸ Therefore, NRTA and OPASTCO urge the Commission simultaneously to require all facilities-based broadband Internet access providers to contribute to universal service as part of any further revisions to the contribution methodology.

NRTA and OPASTCO have previously explained that, as the telecommunications marketplace continues to evolve toward broadband platforms and Internet Protocol (IP) networks, the inclusion of all facilities-based broadband Internet access providers as universal service contributors becomes more and more critical to maintaining the stability, sufficiency, competitive neutrality, and equity of any universal service contribution mechanism.⁹ As the Commission recognized earlier in this proceeding, overall end-user switched interstate telecommunications revenues, which the contribution base presently relies upon, are now on the decline.¹⁰ This is primarily due to the decline in the interstate revenues of the IXC’s whose contributions historically have accounted for more than half of all universal service funding.¹¹

Nevertheless, while the contribution base and IXC interstate revenues may be falling, overall demand for interstate telecommunications and information services has probably never been greater. The demand is simply shifting to service packages and service providers in which either the precise portion of revenues attributable to interstate telecommunications cannot easily be identified (e.g., wireless carriers) or the service provider is not currently required to contribute to universal service. The Commission recently began to address the first issue when it increased the wireless safe harbor to reflect the significant increase in the percentage of wireless network usage that is interstate, since the safe harbor was first adopted (SFNPRM, paras. 21-22). Now it

⁸ NRTA and OPASTCO Comments on FNPRM, p. 14, quoting FNPRM, 17 FCC Rcd 3759, para. 15.

⁹ NRTA and OPASTCO Comments on FNPRM, p. 15.

¹⁰ FNPRM, 17 FCC Rcd 3756, para. 8.

¹¹ *Id.*, 17 FCC Rcd 3755-3756, para. 7.

is time for the Commission to also acknowledge the migration of interstate usage to broadband platforms and IP networks by requiring all facilities-based broadband Internet access providers to contribute to the USF.

The gradual but ever-growing use of broadband platforms and IP networks plays a significant role in the present instability of the contribution base. For instance, consumers use IP networks in a variety of ways (e.g., access to the World Wide Web, e-mail, instant messaging, Internet telephony) and via various broadband platforms (e.g., wireless, cable, satellite) – to substitute for interstate calls on the public switched network. For example, individuals can now access the World Wide Web to make airline, car rental, hotel, and other travel reservations, when previously they would have to make telephone calls to accomplish each of these tasks. People can also transact mail-order purchases of merchandise using the Web, rather than by contacting these same vendors via traditional voice service. Families and friends can now use e-mail messages, rather than long-distance calls, to keep in touch with each other.

The Commission has already determined that it has the authority under Section 254(d) of the 1996 Act to require any facilities-based broadband Internet access provider to contribute to the USF.¹² Under this provision, the Commission may determine that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”¹³ By requiring all facilities-based broadband Internet access providers to contribute as part of any additional modifications to the contribution methodology, the Commission would indeed serve the public interest.

Extending universal service assessments to all facilities-based broadband Internet access

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11534-11535, para. 69

¹³ 47 U.S.C. Section 254(d).

providers would significantly widen the current contribution base. As NRTA and OPASTCO noted previously, this, in turn, would lessen the contribution burden on every service provider, while also sustaining the contribution mechanism for the long term as increasing amounts of interstate communications migrate to broadband platforms and IP networks.¹⁴ Moreover, only wireline telecommunications carriers are currently required to contribute on revenues earned from their broadband transmission service. Thus, requiring facilities-based broadband Internet access providers over all platforms to contribute would eliminate the growing inequity and potential for marketplace distortions that arise under the current rules.

NRTA and OPASTCO urge the Commission to require all facilities-based broadband Internet access providers to contribute to universal service at the same time it makes further refinements to the contribution mechanism. Only then can the Commission fully ensure the stability and sufficiency of the USF and eliminate the growing potential that the contribution rules will skew a consumer's choice of broadband provider.

VII. CONCLUSION

Only one of the proposed “connections-based” methods for assessing contributions can satisfy the Section 254(d) requirement that all interstate telecommunications carriers must contribute on an equitable and nondiscriminatory basis to fund universal service. That method is the proposal to split “connections-based” contribution responsibilities between providers of interstate transmission and switched access services. Even that plan will require further work to fashion its capacity-based component into a fair and administratively workable assessment system. The Commission should reject the other proposals as unlawful and unwieldy and devote its attention to perfecting the contribution mechanism applicable to both transport and access

¹⁴ NRTA and OPASTCO Comments on FNPRM, pp. 15-16.

network connections. At the same time, lest its efforts nevertheless leave the contribution process skewed in favor of functionally equivalent platforms that are currently excused from contributing, the Commission should simultaneously require that all facilities-based Internet access providers such as cable modem platforms contribute to universal service on an equivalent basis to the currently subject wireline platform providers.

Respectfully submitted,

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THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS
COMPANIES

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February 28, 2003

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the joint comments by the National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 28th day of February, 2003, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
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**CC Docket Nos. 96-45, 98-171, 90-571, 92-237,
99-200, 95-116, and 98-179**

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